

IN THE US DIST COURT
SOUTHERN DIST OF OHIO
EASTERN DIV.

10/27/2006 PMD:J

DENNIS NOLAND

CASE NO: 2:05-cv-682
JUDGE MARBLEY
MAGISTRATE JUDGE ABEL

V.
PAT HURLEY, WARDEN

CERTIFICATE OF COMPLIANCE

NOW COMES DENNIS NOLAND, AND MOVES THIS COURT FOR THE RELIEF SOUGHT OF A HEARING AND/OR AN IMMEDIATE RELEASE FROM CONFINEMENT.

THE REPORT AND RECOMMENDATION HAS "FULLY" BEEN EXHAUSTED THROUGH THE LOWER COURTS.

THE OHIO SUPREME COURT DENIED SUCH RELIEF SOUGHT.

I AM NOW PROPERLY IN FRONT OF THIS COURT FOR THE RELIEF SOUGHT.

I MOVE THIS COURT FOR A HEARING TO DETERMINE RELIEF.

RESPECTFULLY SUBMITTED

Skinner et al v. New York Times Company

Dennis Noland
DENNIS NOLAND #
NOBLE CORR. INST.
15708 McCONNELLSVILLE RD.
CALDWELL OHIO 43724

Doc. 19

ATTACH TO: OPINION AND ORDER, OHIO SUPREME COURT JUDGMENT ENTRY.

CERTIFICATE OF SERVICE

I HEREBY STATE THAT A TRUE COPY OF SUCH MOTION WAS SENT TO THE U.S. DIST CLERK TO FORWARD TO THE PROPER PARTY(S) ON THIS 17 DAY OF OCT, 2006 BY U.S. MAIL

BY:

Dennis Noland

FILED

OCT 04 2006

The Supreme Court of Ohio

MARIA J. MENGE, CLERK
SUPREME COURT OF OHIO

State of Ohio

Case No. 06-1217

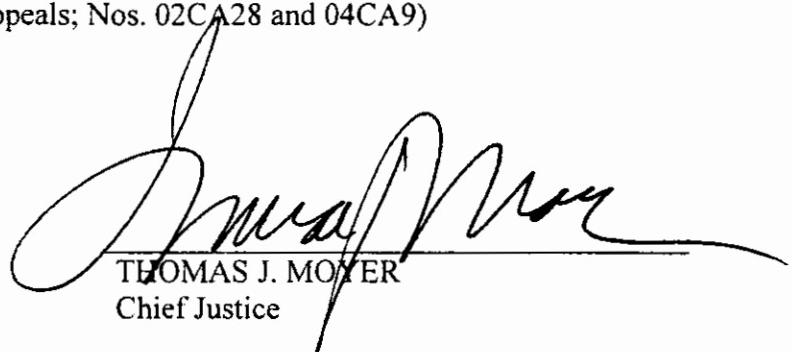
v.

Dennis Noland

E N T R Y

Upon consideration of the jurisdictional memoranda filed in this case, the Court dismisses the appeal as not involving any substantial constitutional question.

(Washington County Court of Appeals; Nos. 02CA28 and 04CA9)



THOMAS J. MOYER
Chief Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DENNIS NOLAND,

Petitioner,

v.

PAT HURLEY, Warden,

CASE NO. 2:05-cv-682
JUDGE MARBLEY
MAGISTRATE JUDGE ABEL

Respondent.

OPINION AND ORDER

On March 21, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that claim two of the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed and that further proceedings be stayed pending petitioner's exhaustion of state court remedies. Surprisingly, respondent has filed objections to the Magistrate Judge's *Report and Recommendation*.

Respondent objects to the Magistrate Judge's recommendation that proceedings be stayed so that petitioner may file a delayed 26(B) application in the state courts. Although petitioner did not raise the ineffective assistance of counsel as an independent claim in this federal habeas corpus petition, as noted by the Magistrate Judge, such claim may constitute cause for his procedural default of claim one, in which he alleges that his sentence violates *Blakely v. Washington*, 124 S.Ct. 2531 (2004). Further, as also noted by the Magistrate Judge, in view of the Ohio Supreme Court's recent decision in *State v. Foster*, – Ohio St.3d –, 2006 509549 (Ohio, February 27, 20-06), petitioner's *Blakely* claim arguably is meritorious.

Respondent argues that the Magistrate Judge improperly raised the issue of ineffective assistance of counsel as potentially establishing cause for the procedural default of petitioner's

Blakely claim. However, this Court is not aware of, and respondent has referred to no cases standing for the proposition that a Federal District Court may not presume that a *pro se* petitioner asserts the ineffective assistance of counsel as cause for the procedural default of another claim. Respondent further argues that a stay is ~~not~~ appropriate in this case under *Palmer v. Carlton*, 276 F.3d 777 (6th Cir. 2002), or *Rhines v. Weber*, 125 S.Ct. 1528 (2005). For the reasons discussed at length in the Magistrate Judge's *Report and Recommendation*, respondent's arguments are not well taken.

Respondent's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**.

Claim two is **DISMISSED**. Further proceedings are **STAYED** pending petitioner's completion of 26(B) proceedings in the state courts. Petitioner is **DIRECTED** to initiate state court action within thirty (30) days and to notify this Court within thirty (30) days of completion of 26(B) proceedings. Failure to comply with the foregoing may result in dismissal of this action.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge